

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAMON MORALES,

Plaintiff,

- against -

5 BROTHERS RESTAURANT, INC. OLD
TOWN, INC., and DENNIS D'ONOFRIO,

Defendants.
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Civil Case No.: 2:14-cv-04702
(LDW)(AYS)

**NOTICE OF MOTION
FOR PARTIAL
SUMMARY JUDGMENT**

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Dennis Donofrio sworn to January 15, 2016 and the exhibits annexed thereto, the declaration of Eric J. Bressler dated January 15, 2016 and the exhibits annexed thereto, the statement pursuant to Rule 56.1, and all of the prior proceedings had herein, the undersigned moves this Court pursuant to Federal Rules of Civil Procedure 56 for an order granting summary judgment to defendants and against plaintiff as follows:

- (a) determining that liquidated damages under plaintiff's minimum wage and overtime claims pursuant to the Fair Labor Standards Act and under plaintiff's minimum wage and overtime claims pursuant to New York State Labor Law cannot be simultaneously recovered or "stacked" for minimum wage violations and for overtime violations;
- (b) determining that plaintiff's hourly wage from the time of his employment until January 1, 2013 was \$7.25 per hour and \$8.00 thereafter until termination of his employment;
- (c) determining that plaintiff's first day of employment with defendants (or

any of them) April 17, 2012 and that plaintiff's last day of employment with defendants (or any of them) was July 17, 2014;

(d) dismissing the claim for retaliatory termination of employment under New York State Labor Law; and

(e) granting such other and further relief as is just and proper

on the grounds that there is no genuine dispute as to the material facts with respect thereto and that defendants are entitled to judgment as a matter of law thereon.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, must be filed in accordance with the briefing schedule established by the Court.

Dated: January 15, 2016
Mattituck, New York

WICKHAM, BRESSLER & GEASA, P.C.

By: 

Eric J. Bressler, Esq.
Attorneys for Defendants
13015 Main Road, P.O. Box 1424
Mattituck, New York 11952
(631) 298-8353

TO: D. Maimon Kirschenbaum, Esq.
Joseph & Kirschenbaum, LLP
233 Broadway, 5th Floor
New York, New York 10279

Ejb/clt/Donofrio/nom